

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 20, 2005 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jon Ellingson (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 18, 1/10/2005; SB 80, 1/12/2005
Executive Action: None.

CHAIRMAN WHEAT asked **SEN. MCGEE** to chair the Committee while he presented SB 18.

HEARING ON SB 18

Opening Statement by Sponsor:

SEN. MICHAEL WHEAT, SD 32, BOZEMAN, opened the hearing on **SB 18**, Provide additional judge for 18th judicial district. **SEN. WHEAT** stated that SB 18 was a bill that had been in the works for quite some time in Gallatin County. He went on to say that SB 18 was a bill that would create a third judgeship. He then discussed the increase in the workload in Gallatin County since 1981. **SEN. WHEAT** further stated that the SB 18 was supported and endorsed by all of the judges across the State along with the Gallatin County Commissioners and the Gallatin County Bar Association.

Proponents' Testimony:

Judge Mike Salvagni, Bozeman, spoke in support of SB 18 and informed the Committee that he was also expressing the support of Judge Holly Brown, who was unable to attend the hearing. **Judge Salvagni** provided written testimony along with supporting documentation which is attached as Exhibit 1.

[EXHIBIT\(jus15a01\)](#)

Bill Murdock, a member of the Gallatin County Commission, speaking on behalf of the entire County Commission, spoke in support of SB 18 and asked that the Legislature assist them in their very real need. **Mr. Murdock's** written testimony is attached as Exhibit 2.

[EXHIBIT\(jus15a02\)](#)

Judge Dorothy McCarter, First Judicial District Court, Helena, on behalf of the Montana Judges Association, stated that all of the District Court judges in Montana wholeheartedly supported SB 18. She went on to say that they recognize the critical need for a third district judge in Gallatin County.

Marty Lambert, Gallatin County Attorney, explained that he was a lifetime Bozeman resident. He went on to talk about the growth of the County, the back log of cases in the Court system, and the need for an additional District Court Judge. He concluded asking the Committee for a do pass recommendation for SB 18.

John Glover, an attorney in Bozeman and the President of the Gallatin County Bar Association, stated that his association wholeheartedly stood in support of SB 18.

Dorie Refling, an attorney from Bozeman and President Elect for the Gallatin County Bar Association, stated that she had been asked to present to the Committee the civil litigators view of the problem with having only two judges in Bozeman. She went on to give an example of an eight-day jury trial, held last April, that had come back with a verdict in favor of her client that judgment had still not been entered on due to the extensive workloads of the judges. **Ms. Refling** continued saying that the workloads were crushing and, therefore, the Judges simply could not keep up. She concluded urging support for SB 18.

Jed Fitch, Montana Trial Lawyers Association, expressed support for SB 18 and stated, "Justice delayed is justice denied." He urged support for SB 18.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 27.5}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. WHEAT stated that SB 18 was an irrefutable bill. He went on to say that the need is there and it is a bill that he hopes can be passed out of Senate Judiciary with a unanimous do pass recommendation. **SEN. WHEAT** referred to the fiscal note and indicated that it could be discussed during Executive Action. He concluded that it was a bill that was extremely necessary for his community and county.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 1.1}

SEN. WHEAT resumes chairing the Committee.

SEN. ELLINGSON joins the Committee.

Three minute break.

SEN. MCGEE introduced Betty Bollinger and expressed everyone's well wishes for her recovery.

HEARING ON SB 80**Opening Statement by Sponsor:**

SEN. GARY PERRY, SD 35, MANHATTAN, opened the hearing on **SB 80**, Prohibit open alcohol containers in vehicles. **SEN. PERRY** stated that he was bringing SB 80 at the request of the Department of Transportation. He continued saying that SB 80 would ban the possession of open alcoholic containers in motor vehicles on public highways. He went on to say that Montana was regarded as having one of the worst alcoholic-related crash records in the country. **SEN. PERRY** informed the Committee that approximately one-half of the traffic fatalities in 2003 were alcohol related. He went on to discuss statistics related to alcohol related accidents and the changes that had been made to the law in the 2003 Session trying to address the problem. He then said that SB 80 was the next step in trying to curb the death and destruction associated with alcohol related crashes. **SEN. PERRY** then stated that SB 80 would provide that both the driver and passengers would not be able to possess an open alcoholic beverage container in the passenger area of a vehicle on the highways of the State. He continued saying that the law would apply to everyone in the vehicle and would subject a person convicted of the offense to a fine of up to \$100.00.

Proponents' Testimony:

Lieutenant Governor John Bollinger, State of Montana, spoke in support of SB 80 and provided his written testimony for the record which is attached at Exhibit 3. He also provided the Committee with a copy of an e-mail he had received. This e-mail is attached as Exhibit 4.

[EXHIBIT\(jus15a03\)](#)

[EXHIBIT\(jus15a04\)](#)

Jim Lynch, Director, Department of Transportation, expressed support for SB 80. **Mr. Lynch** provided his testimony for the record along with documentation supporting SB 80. **Mr. Lynch's** testimony and documentation is attached as Exhibit 5.

[EXHIBIT\(jus15a05\)](#)

Brenda Nordlund appearing on behalf of Attorney General Mike McGrath, in support of SB 80. She stated that it was about the message, the message being, "do not drink and drive." She went on to discuss the fact that Montana had laws about drunk driving but not about drinking while driving. She then asked two questions. One being the policy question as to whether or not an

open container law would be approved for Montana and two, whether an open contained law would be approved that was federally compliant. **Ms. Nordlund** commented that SB 80 would fulfill both questions affirmatively. She then said that it was time for an open container law in Montana. She concluded by urging support for SB 80.

Paul Grimstad, Colonel, Montana Highway Patrol, stated that he was there on behalf of the Attorney General's Office and the Patrol in support of SB 80. He explained that there were two types of drinking and driving. There was drinking and driving at the same time and then there was drinking and then driving. He went on to say he felt they were the same thing. He then stated that Montana had the dubious distinction of being a dangerous state when it came to outdated traffic laws, incidence of DUI and fatal crashes. **Colonel Grimstad** then discussed the amount of alcohol it would take to be considered over the legal limit and talked about some statistics that he had regarding the number of traffic stops and accidents there were where they found alcohol to be a factor. He further stated that they were more likely to find alcohol containers at an accident than they would from a routine traffic stop. He wrapped up his testimony asking the Committee to pass SB 80.

{Tape: 1; Side: B; Approx. Time Counter: 1.1 - 25.4}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 3}

Dallas Erickson representing his family and the Montana Family Coalition, testified in support of SB 80. **Mr. Erickson's** written testimony is attached as Exhibit 6.

EXHIBIT(jus15a06)

Bill Muhs, Public Policy Liaison for Mothers Against Drunk Driving in Gallatin County, stated that he was a victim of drunk driving as he had lost a daughter to a drunk driver. **Mr. Muhs** spoke in support of SB 80 and provided his written testimony for the record. **Mr. Muhs'** testimony is attached as Exhibit 7.

EXHIBIT(jus15a07)

Michael Harris representing himself and as a Board Member of the Bozeman Community Alcohol Coalition, expressed his support for SB 80. **Mr. Marriis** submitted an e-mail message that had come in on behalf of **SEN. MANGAN** and is attached hereto as Exhibit 8. He

went on to say that he and the Coalition fully supported SB 80 and thanked **SEN. PERRY** for sponsoring the bill.

EXHIBIT(jus15a08)

Marty Lambert, President of the Montana County Attorney's Association, expressed support of SB 80. He stated that he thought that in the last couple of sessions the Legislature had taken some positive steps toward dealing with the problem of drinking and driving in Montana. He went on to say that passing SB 80 would be a positive step toward dealing with the attitude of Montanans toward drinking and driving.

Don Hargrove representing the Montana Addictive Services Providers, who are concerned with the education, prevention and intervention of substance and alcohol abuse in Montana. He went on to say that SB 80 represents a cultural change for the residents of the State. He further commented on the fact that he felt that the people of Montana would vote in favor of the bill if they were asked. **Mr. Hargrove** expressed their appreciation to **SEN. PERRY** for bringing the bill forward and urged the Committee to pass SB 80.

Harris Himes, President of the Montana Family Coalition talked about his background with the Marine Corp and the need for personal sacrifice for the good of the whole. He continued saying that although there were a few individuals that could drink and still drive safely, in most cases that was not true, therefore, it was necessary that no one be allowed to drink and drive. **Mr. Himes** indicated that he felt that money should not be the issue, lives should be more important. **Mr. Himes** strongly urged a do pass recommendation for SB 80.

Cary Hagreberg, Montana Contractors Association, urged the Committee to support SB 80. He went on to discuss the federal sanctions and the jobs that would be lost if Montana lost its federal funding for highways. He then talked about the safety issues involved for those individuals working on highway construction jobs, especially the surveyors and flag people. **Mr. Hagreberg** informed the Committee about the results of a public opinion poll they had conducted and indicated that this poll reflected that there was not much geographic distinction around the State as to who was for and who was against an open container ban. He concluded by urging that SB 80 be passed.

{Tape: 2; Side: A; Approx. Time Counter: 3 - 29.6}

Beda Lovitt representing the Montana Medical Association and the Montana Psychiatric Association and its physician members, stated

that they applauded the efforts of the legislation as another measure toward reducing alcohol related accidents. She urged the Committee to pass SB 80.

Greg Van Horssen representing State Farm Insurance Company and speaking on behalf of Jacqueline Lenmark for the American Insurance Association, stated that both companies strongly support the bill and would ask for a do pass.

Jim Kembel representing the Montana Association of Chief's of Police, stated that they respectfully requested the Committee's approval of SB 80.

Jay Skoog representing the American Counsel of Engineering Companies of Montana, urged the Committee to support the bill.

Bill Slaughter, Director, Department of Corrections, talked about his career in law enforcement. He stated that it was about the message, the message "don't drink and drive, but a go cup is okay." He went on to say that as far as he was concerned this bill could be called the "go cup" bill. **Mr. Slaughter** asked the Committee to give law enforcement a tool and save lives with passage of SB 80.

Steve Yeakel, Montana Council for Maternal and Child Health and AAA Mountain West, expressed strong support for SB 80.

Jim Ahrens, President, Montana Hospital Association, stated that MHA stood in support of the bill and urged the Committee to do the same.

Kristi Blazer representing the Montana Beer and Wine Wholesalers Association, stated that they supported the open container ban as the political writing was on the wall. She went on to say that she believed SB 80 would be passed. She continued saying that the Wholesalers Association was prepared to mitigate the bill as they understood that it could not be made a secondary offense and still receive the federal funding for highways. **Ms. Blazer** stated that they were asking that open containers in vehicles be made against the law, however, the fines should be reasonable and violations should not go on individuals driving records for purposes of insurance.

Kris Minard representing herself, expressed her support for SB 80. She went on to say that SB 80 would comply with TEA-21 and also be a life saver. She stated that she was amazed to find out that Montana had the worst DUI related fatality rate in the entire nation. **Ms. Minard** provided the Committee with a handout showing all 50 states and their alcohol related fatalities and

discussed the statistics and their relationship to complying with TEA-21. This handout is attached as Exhibit 9. **Ms. Minard** concluded stating that she felt SB 80 would make the roads safer for all Montanans and asked the Committee to please pass this bill.

EXHIBIT(jus15a09)

Spook Stang, Executive Vice President, Montana Motor Carriers Association, stated that the Association wanted to go on record in support of SB 80. He went on to say that over 75 percent of all traffic accidents involving large trucks were the fault of the other vehicle. He continued saying that the reduction of drinking drivers on the highways would make their drivers safer and asked the Committee to please pass SB 80.

Mark Taylor appearing on behalf of the Association of Montana Highway Patrolmen, stated that their members had participated in the Pilot Project through the Patrol and were there to endorse the position of the **Colonel** on this important issue and that they also supported the efforts of **SEN. PERRY**.

Earl Salley, Assistant Business Manager for the International Union of Operating Engineers Local 400, expressed strong support for SB 80.

Opponents' Testimony:

John Iverson representing himself, stated that he was not in favor of anyone dying on Montana's highways, however, no one was asking the younger population how they feel about the message they are receiving. He then addressed several issues that had been raised by some of the proponents. **Mr. Iverson** stated that the question of the day was if banning an open container would prevent a person from driving drunk. He went on to say that they knew that would not be the case. **Mr. Iverson** then discussed how he and his friends dealt with alcohol consumption and the use of a designated, non-drinking driver. He concluded by stating his concern that under the bill if they were stopped by law enforcement, the non-drinking, designated driver would have been the person receiving the citation when they had not done anything wrong. He urged the Committee to table the bill.

Paul Reynolds, private citizen, asked if they felt SB 80 would stop drunk drivers from driving. He went on to say that it confused him and left him with a question as to whether the bill was being considered because of federal funding or was it because it was what the people of Montana wanted. He further inquired as to whether it would in reality discourage DUIs. He then asked

about the \$100 fine and if a violation would go on an individuals driving record and make common criminals out of good citizens.

Mr. Reynolds strongly urged the Committee to consider the fines and penalties involved in SB 80.

Dwaine Iverson on behalf of himself, stated his concern that all of the talk had been about DUIs and not about open containers. He went on to say that he agreed they needed to take care of drunks driving, however, he did not agree that they needed to take care of good citizens who were trying to comply with the law and still enjoy a beverage. **Mr. Iverson** continued saying that it looked to him like they were headed toward prohibition. He concluded asking the Committee if they really wanted federal mandates to come down on Montana. He concluded saying that since the bill was being brought forward for funding purposes, the fines should be kept to a minimum.

Informational Testimony:

Jeff Linkubah, Researcher, Montana State University Bozeman, informed the Committee that the focus of his research for the last 15 years had been on the topic of reducing impaired driving, reducing consequences associated with the abuse of alcohol and other health issues. He indicated that perception was everything, that what was perceived to be real and what was perceived to be valued amongst the population was what was gravitated towards. **Mr. Linkubah** stated that he would be available for any questions the Committee might have.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 27.3}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 3.9}

Questions from Committee Members and Responses:

SEN. MCGEE asked **Colonel Grimstad** to talk about how they were going to deal with designated drivers. **Colonel Grimstad** responded that in regard to the designated driver it was his understanding, as the law was written, that any person that had an open container irregardless of whether it is the driver or passenger, it would be the person with the open container that would be issued the citation.

SEN. MCGEE asked **Colonel Grimstad** how they were going to enforce this law. **Colonel Grimstad** replied that they would only be able to enforce the law on traffic stops for other legitimate violations.

SEN. MANGAN asked **SEN. PERRY** about Mr. Muhs' proposed amendments which would make the fine a minimum of \$100 and fines for all

parties and if he had considered adding or requesting such amendments. **SEN. PERRY** replied that he had discussed the matter at length with opponents to the bill and with the Department of Transportation. He went on to say that the fines could be lower or they could be higher. He then stated that in regard to the federal requirements, the amount of the fine was not addressed. He further stated that the objective was to pass the bill and he felt that increasing the fines would be a detriment to passage of SB 80.

SEN. MANGAN asked **SEN. PERRY** if he would agree, at this point, that the fine could be as low as a dollar. **SEN. PERRY** answered that it could.

SEN. SHOCKLEY asked **Colonel Grimstad** what he meant by alcohol-related accidents. **Colonel Grimstad** responded that alcohol-related accidents meant where alcohol was either found or a contributing factor to the crash, based on the officer's investigation.

SEN. SHOCKLEY further asked **Colonel Grimstad** if a person with a blood alcohol level of .01 was stopped at a stop sign and was hit by another individual, with no alcohol in their system, if that would be defined as an alcohol-related accident. **Colonel Grimstad** replied that he would disagree. He went on to say that if an individual was below .02 he would not be considered to have alcohol in the system.

SEN. SHOCKLEY asked **Colonel Grimstad** if the person at the stop sign were .02, the innocent party, was hit by somebody with zero alcohol in his blood, if it would be an alcohol-related accident. **Colonel Grimstad** responded that he was correct.

SEN. SHOCKLEY asked **Colonel Grimstad** about his testimony regarding drinking a drink an hour for a relatively short period of time, the person would be inebriated. **Colonel Grimstad** replied that this was not what he had said. He went on to say that as a general rule at the .10 level, a person who had consumed one drink per hour for several hours would be under the .10 level.

SEN. Shockley asked **Colonel Grimstad** if he was aware that the Attorney General last Session treated the House Judiciary Committee to drinks in your office. **Colonel Grimstad** responded that he was not aware of that event.

SEN. SHOCKLEY asked **Brenda Nordlund** if an open container violation would go on the persons driving record, and if it did, what the cost would be. **Ms. Nordlund** replied that under the current language of the bill it would be a reportable offense

under Section 61-11-101. She went on to say that if it were reported on the record under 61-11-204(5), it would be treated as a moving violation and it would be given two points. She further stated that if violations of this law were reported on the record they would be treated very seriously by the insurance companies.

SEN. SHOCKLEY asked **Tim Reardon, Attorney, Department of Transportation**, if the federal law specified how small or large the fine needed to be and a fine of \$10.00 could work. **Mr. Reardon** responded that he was correct. He further stated that there was no floor or ceiling as far as the fine in the federal law.

SEN. SHOCKLEY asked **Mr. Reardon** about how to handle having an empty alcohol container in the vehicle with the last drops of alcohol in it. **Mr. Reardon** replied that there was no easy answer to that question and, therefore, they would be putting a lot of discretion into the hands of the officers.

SEN. SHOCKLEY asked **Mr. Reardon** if they could comply with the law by inserting the language useable amount of alcohol in a container. **Mr. Reardon** stated that he would be willing to look at other states to see if there were refinements that could be used in SB 80.

SEN. SHOCKLEY asked **Jim Lynch, Director, Department of Transportation**, how much of the their budget for highway construction last year went unspent. **Mr. Lynch** responded that it was his understanding that they did not have any of their budget go unspent.

SEN. SHOCKLEY asked **Jim Currie, Montana Department of Transportation**, how much of the money appropriated for the last fiscal year went for pavement and much went unspent. **Mr. Currie** stated that they had left some State Budget Authority on the table. He went on to say that the reason they had done that was because the amount of federal funding had been less than what they had anticipated, because there had been re-authorization of the Federal Highway Act. He then stated that they had used all of their federal authority.

SEN. SHOCKLEY asked **Mr. Currie** if, in a normal year, there was federal money left over that was not spent. **Mr. Currie** answered that it was the normal situation to have federal funds leftover.

SEN. SHOCKLEY asked **Dallas Erickson** at what point, or what percentage, would a candidate have to have before he needed those

feathers he was talking about regarding voting for SB 80. **Mr. Erickson** replied that he did not understand the question.

SEN. SHOCKLEY reminded **Mr. Erickson** that he had said that the Republicans should vote for SB 80 so that they would have feathers in their caps. **Mr. Erickson** stated that what he had been referring to was that the feather would represent the lives that passage of SB 80 would save.

SEN. SHOCKLEY further asked **Mr. Erickson** if he had been implying that passing the bill would help them get re-elected. **Mr. Erickson** stated that he might have been.

SEN. SHOCKLEY then asked **Mr. Erickson** if he was aware of his numbers during the last election. **Mr. Erickson** replied that he was not.

SEN. O'NEIL asked **Mr. Reardon** if, in order to continue to receive federal money, they just needed to have an open container law or did it have to be a TEA-21 compliant open container law. **Mr. Reardon** responded that it had to be a TEA-21 compliant law. He went on to say that the bill they had in front of them was as basic as it could be made to make it compliant.

SEN. O'NEIL asked **Mr. Reardon** if a law such as the one in Indiana would be available to Montana. **Mr. Reardon** explained that he was not familiar with the other state's statutes and would like to have an opportunity to look them up. He went on to say if they were talking about blood alcohol content versus open container, they were talking to entirely different things. He continued saying that if they were talking about only the open container, SB 80 contained the minimal requirements required to be TEA-21 compliant.

SEN. O'NEIL asked **Mr. Reardon** if there were some way to construct a law that would deal only with those individuals who had been drinking having an open container in their vehicle. **Mr. Reardon** indicated that he would look at other state language that might allow for some sort of compromise on the minimal amount in the empty container.

SEN. O'NEIL asked **Mr. Reardon** if in order to be TEA-21 compliant the law would have to state that the passengers in the car could not have an open container. **Mr. Reardon** responded that it must apply to all occupants of the vehicle.

SEN. O'NEIL asked **Mr. Reardon** if according to the bill the passengers could have an open container if they had a

professional driver. **Mr. Reardon** replied that there were some exceptions such as being in a bus, a limousine, a taxi, or in the living quarters of a motor home away from the driver.

SEN. O'NEIL further asked **Mr. Reardon** if there were any exceptions that would allow a pregnant lady that had not been drinking to drive her husband home, or have a designated driver. **Mr. Reardon** replied that there were not.

{Tape: 3; Side: A; Approx. Time Counter: 3.9 - 27.2}

SEN. MANGAN asked **Colonel Grimstad** if they were to place some nonsense in the bill about amounts of alcohol left in bottles or containers, what would it do to enforcement of SB 80. **Colonel Grimstad** indicated that it would be hard to enforce.

SEN. MCGEE asked **Marty Lambert** how he would prospect the law with the "knowingly" phase in it. **Mr. Lambert** stated that "knowingly" was basically an awareness that what was being done constituted a crime. He went on to say that they would have to have an officer who was able to say that he had seen the person with the beer in their hand, or that they had seen the person put the beer on the floor, or that they had smelled alcohol in the passenger compartment of the vehicle. He further explained that they would have to take all of the facts that the investigating officer reported and determine whether or not the mental state could be proven.

SEN. MCGEE asked **Mr. Reardon** if the knowingly language was required by the federal overriding law and since TEA-21 had expired if he had any idea what the new language would be with regard to open containers. **Mr. Reardon** replied that the term "knowingly" was a compromised term which had been agreed upon during the previous Session when they had worked on a similar bill. He further stated that the term was not specifically required in the federal law. **Mr. Reardon** stated that presently the government was operating under the old TEA-21 by extending it as needed, since Congress had not been able to reconcile their differences with the White House and themselves. He went on to say that both of the bills presently pending in the U.S. House and Senate have a "hard sanction" in terms of the money given to the states. He further stated that under the pending laws it would be a hard sanction and the federal funding to the states would be lost if they did not have a compliant open container law in effect.

SEN. MCGEE asked **Mr. Reardon** if he had seen language in the proposed legislation that would suggest that the language would be essentially the same as what they are dealing with in TEA-21.

Mr. Reardon responded that the language is that the money will be gone, it would no longer be transferred to the Safety Program. He further clarified that there would be language related to the open container law.

SEN. MCGEE asked **Brenda Nordlund** if she would agree that if they enacted SB 80 it would effectively curtail the designated driver program in the State. **Ms. Nordlund** answered that it would be true, with the exception of the hired driver situations.

SEN. MCGEE asked **Ms. Nordlund** if she thought it was wise to do away with the designated driver, since people were going to drink and since they no longer would be able to use a designated driver, would they be required to hire a taxi. **Ms. Nordlund** replied that all the bill would do is prohibit open containers in vehicles, it would not prohibit someone using a designated driver to get them home.

SEN. CROMLEY asked **Ms. Nordlund** if she agreed with Colonel Grimstad that if a vehicle were stopped, it would be the individuals in possession of open containers not the driver, if that person did not have possession of an open container. **Ms. Nordlund** replied that she did agree. She went on to say that the bill was drafted in such a way that it did not put the responsibility on the driver.

SEN. CROMLEY asked **Ms. Nordlund** how this bill would do away with the designated driver policy. **Ms. Nordlund** stated that it did not.

SEN. SHOCKLEY asked **County Attorney Lambert**, if there was one person in the car that was a passenger and was drinking, if the driver would be cited for the open container. **Mr. Lambert** replied that the driver could be cited because the officer could determine that there was constructive possession by the driver.

SEN. SHOCKLEY asked **Mr. Lambert** if the person who was actually in possession of the alcoholic beverage could be cited. **Mr. Lambert** replied that the person would be in actual possession of the container and, therefore, would be fined.

SEN. SHOCKLEY asked **Mr. Lambert** what would happen if the driver were the one with the open alcoholic beverage and the passenger did not. **Mr. Lambert** replied in reality both parties could be cited, however, he hoped that the officers would use good sense when determining whether or not to cite a person.

SEN. O'NEIL asked **Jeff Linkubah** if he would explain why four states without open container laws had lower fatality rates than

Montana. **Mr. Linkubah** stated that he did not know as there were too many variables that would go into the analysis and research.

SEN. O'NEIL then asked **Mr. Linkubah** if it would be fair to say that if they did pass the open container law, that there was the possibility that it would not reduce the fatality rate. **Mr. Linkubah** answered that the answer was "yes and no" and explained why he felt that way.

SEN. O'NEIL asked **Mr. Linkubah** if after the laws are passed and the rates go down, if later on the rates would begin to rise. **Mr. Linkubah** stated that it could. He then went on to clarify his answer.

SEN. MOSS asked **SEN. PERRY** to describe who owns the roads and also, provide the fundamental policy issue which SB 80 addresses. **SEN. PERRY** replied that it was the public highways, access across public rights of way, shoulders of the road and public parking lots.

SEN. MOSS then asked **SEN. PERRY** to describe the fundamental policy issue which SB 80 addresses. **SEN. PERRY** stated that it was for the purpose of an attempt to save lives on the highways.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 21.4}

Closing by Sponsor:

SEN. PERRY expressed his thanks to Governor Schweitzer, Lieutenant Governor Bollinger, Attorney General Mike McGrath, Director Lynch, Director Slaughter, and everyone that had supported SB 80. **SEN. PERRY** went on to specifically address some of the objections he had heard during testimony from opponents. **SEN. PERRY** proceeded to discuss the ticket being placed on the driver's driving record and that he was willing to amend the bill so that the ticket would not go on the record of the passengers in the vehicle, which would still comply with federal guidelines. **SEN. PERRY** proceeded to address the perception that the law was being presented because of blackmail regarding the loss of federal highway funding. He went on to say that SB 80 was not about money or TEA-21, it was about what was rational sound judgment and policy regarding the safety of the citizens of Montana. He concluded saying that there were issues that were far more important than money and statistics and asked the Committee to consider their decision regarding SB 80 from their hearts and think of the lives that they could save.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 10.6}

ADJOURNMENT

Adjournment: 12:30 P.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus15aad0.TIF](#))